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STATEMENT BY SENATOR STROM THURMOND ON PROPOSED CHANGE IN CLOTURE
RULE OF THE SENATE, ON SENATE FLOOR, JANUARY 9, 1959.

MR. PRESIDENT:

I am unalterably opposed to any change in the present cloture rule of the Senate which would increase the power of the majority to put a gag on the minority.

Begin It is my firm opinion that the rule by which ^{+two-thirds} ~~three-fourths~~ of the membership can limit debate is as ^{RESTRICTIVE of free discussion} ~~strong~~ as it can be, at the present time, without seriously infringing on the right of the minority to be heard, the right of the States to equal representation, and the preservation of the Senate as a great and unique institution.

The Senate is the last forum on earth where men can discuss matters of vital importance without severe restrictions on debate. This circumstance is one reason, perhaps the major reason, why the Senate has become known as the world's greatest deliberative body and why the great English statesman, Gladstone, described the Senate as "that remarkable body, the most remarkable of all inventions of politics."

I willingly accept the fact, so frequently pointed out by those who would impose gag rule on the Senate, that the rules of this body are unusual. Indeed, the Senate is unique among parliamentary bodies. It is a great legislative body, and all the greater because it has not been constrained to bend to any popular notion of what rules a parliamentary body should follow.

The roots of the Senate rules are founded in history. At the time our Constitution was being framed, there was a great reluctance, on the part of the individual States, to surrender any of their cherished liberties to a Federal government.

At that time, there were some unusual laws and customs in most of the individual States. The people within these States were wary of surrendering State sovereignty to a Federal government which might arbitrarily and hastily nullify State laws. They had recently freed themselves from tyranny and secured for themselves individual liberty in a great fight for independence. Consequently, numerous safeguards to protect the rights of the States were built into the Constitution. Before they would assent to the ratification

of this supreme law, however, they won assurance of early approval of the first Ten Amendments to the Constitution. These Amendments, commonly referred to as the Bill of Rights, constitute the greatest set of civil and individual rights to be found anywhere.

In order to illustrate the value the people placed upon preserving their individual liberties and the rights of the States, I will briefly read to this body the Bill of Rights:

ARTICLE I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

ARTICLE II

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."

ARTICLE III

"No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner prescribed by law."

ARTICLE IV

"The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

ARTICLE V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property

~~be taken for public use, without just compensation."~~

ARTICLE VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

ARTICLE VII

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

ARTICLE VIII

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

ARTICLE IX

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

ARTICLE X

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

✓ One of the principal safeguards built into the original Constitution was the formation of a Senate in which every State was given equal representation. The Senate was envisioned, by the Founding Fathers, as a body where the rights of States, and the views of minorities, would be given unusual consideration. During the course of the debates of the Philadelphia Constitutional Convention of 1787, the delegates reached agreement upon a House of Representatives to be elected by the people every two years and

based upon a population ratio divided into congressional districts. After this action was taken, the smaller of the participating 13 States wondered how their minorities could be adequately protected from the capricious whims of a majority in the House.

After long debate which was at times most acrimonious and which actually threatened to break up the Convention, the solution was offered by the wise and venerable Benjamin Franklin; namely, equal representation in the Senate for every State. And, to make sure that that representation would be of a character that would calmly consider and patriotically and unselfishly act on laws under which all the people would have to live, it was provided in the original instrument that Members of the Senate should be elected by State legislators and not by popular vote and given a term of six years.

The Founding Fathers also wrote into the original Constitution other safeguards against what the advocates of a rules change term "majority rule." They provided in certain instances for votes requiring a majority of two-thirds. (Here are some of these provisions as found in the Constitution:

"No person shall be convicted on impeachment without the concurrence of two-thirds of the Senators present" (art. I, sec. 3)

"Each House, with the concurrence of two-thirds, may expel a Member." (art. I, sec. 5)

"A bill returned by the President with his objections may be repassed by each House by a vote of two-thirds" (art I, sec. 7)

"The President shall have power, by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present concur." (art. II, sec. 2)

"Congress shall call a convention for proposing amendments to the Constitution on the application of two-thirds of the legislatures of the several States." (art. V)

"Congress shall propose amendments to the Constitution whenever two-thirds of both Houses shall deem it necessary." (art. V)

"When the choice of a President shall devolve upon the House or Representatives, a quorum shall consist of a Member of members from two-thirds of the various States of the Union." (amendment 12)

"A quorum of the Senate, when choosing a Vice President, shall consist of two-thirds of the whole number of Senators" (amendment 12)

The Constitution, therefore, does not give recognition, in all cases, to the right of the majority to control.

By analogy it requires a two-thirds vote of the Senate to expel one single Member.

Thus, we can see from a glance back into history how concerned our forefathers were for protecting the rights of individuals, minorities, and the States in drafting the fundamental principles of our government. From the start, too, our forefathers recognized that these rights could only be secured if adequate protection was provided by established rules of procedure. They had the wisdom to realize that substantive rights contained in the supreme law might be later mutilated or trammelled if procedural safeguards were not provided to insure long and careful deliberation of the legislative issues which, if approved, might restrict the rights of the individuals, minorities, and the States.

Thus we find the great statesman and political philosopher, Thomas Jefferson, saying in the preface to his Manual, which he deposited with the Senate and which became the recognized guide for all our legislative bodies:

"Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say it was a maxim he had often heard when he was a young man, from old and experienced members, that nothing tended more to throw power into the hands of administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, the rules of proceeding; that these forms, as instituted by our ancestors, operated as a check and control on the actions of the majority, and that they were, in many instances, a shelter and protection to the minority against the attempts of power. So far the maxim is certainly true, and is founded in good sense; that as it is always in the power of the majority, by their numbers, to stop any improper measure proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms and rules of proceeding which have been adopted as they were found necessary, from time to time, and are become the law of the

House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check and which the wantonness of power is but too often apt to suggest to large and successful majorities.

"And whether these forms be in all cases the most rational or not, is really not of so great importance. It is much more material that there should be a rule to go by, than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body."

On a subsequent occasion, Mr. Jefferson had this to say concerning the protection of minority interests:

"Bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression."

✓ In accordance with the advice of Jefferson, the rules of the Senate were framed to provide for a check on the tyranny of the majority. The tradition has been preserved to the present day, although the rules of the Senate have been altered on some few occasions. ~~Perhaps one of the best recent commentaries on how well the Senate rules have served their purpose in preserving minority rights without adversely affecting the rights of the majority was written by Mr. William S. White, distinguished journalist and author of the book, "Citadel--The Story of the United States Senate." It is appropriate that his conclusions be presented to the Senate at this time:~~

"Conscious though one is of the abuse of Senatorial power, one glories nevertheless in the circumstances that there is such a place, where Big Senators may rise and flourish from small States.

"For the Institution protects and expresses that last, true heart of democratic theory, the triumphant distinction and oneness of the individual and of the little State, the infinite variety in each of which is the juice of national life.

~~"It is perhaps often forgotten that the democratic ideal is not all majority; that, indeed, at its most exquisite moments the ideal~~

~~is not for the majority of all but actually for the minority of one.~~

"The Senate, therefore, may be seen as a uniquely Constitutional place in that it is here, and here alone, outside the courts--to which access is not always easy--that the minority will again and again be defended against the majority's most passionate will.

"This is a large part of the whole meaning of the Institution. Deliberately it puts Rhode Island in terms of power, on equal footing with Illinois. Deliberately by its tradition and practice of substantially unlimited debate, it rarely closes the door to any idea, however wrong, until all that can possibly be said has been said, and said again. The price sometimes is high. The time killing, sometimes, seems intolerable and dangerous. The license, sometimes, seems endless; but he who silences the cruel and irresponsible man today must first recall that the brave and lonely man may in the same way be silenced tomorrow.

"...For illustration, those who denounce the filibuster against, say, the compulsory civil rights program, might recall that the weapon has more than one blade and that today's pleading minority could become tomorrow's arrogant majority. They might recall, too, that the techniques of communication, and with them the drenching power of propaganda, have vastly risen in our time when the gaunt aerials thrust upward all across the land. They might recall that the public is not always right all at once and that it is perhaps not too bad to have one place in which matters can be examined at leisure, even if a leisure uncomfortably prolonged.

"...It is, in the very nature of the Senate, absolutely necessary for the small States to maintain the concept of the minority's veto power, having in mind that it is only within the Institution that his power can be asserted or maintained.

"...Where a powerful majority really wants a bill it will find means to have its way, cloture or no cloture."

✓ Throughout the history of our country, majorities have assailed the rules of the Senate, because the rules of the Senate act as a brake on the will of the majority, especially a radical majority.

I shall not assign base motives to the various majorities who, down through the years, have attempted to change the rules of the Senate. Fortunately for the United States, there have been

relatively few cases in which a group of Senators, pressing for legislation, was not motivated by a sincere desire to benefit the country. We can take it as a general rule that the majority always thinks it is right.

Believing themselves to be right, the majority side, in any issue, is naturally vexed and even angry when it finds its will frustrated by a minority. It resents seeing a group which it believes to be in the wrong obstructing and delaying the enactment of legislation it believes to be useful.

This is a frustration which can cause a great mind to go astray and fall into error.

I think of Woodrow Wilson, for example. Wilson was one of the great students of our government long before his election to the Presidency. Writing in 1881, in his Congressional Government, he observed that "the Senate's opportunities for open and unrestricted discussion, and its simple, comparatively unencumbered forms of procedure, unquestionably enable it to fulfill with every considerable success its high functions as a chamber of revision."

In further expressing his views on free debate in the Senate, Mr. Wilson made this statement:

"It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the Government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct.

"The informing function of Congress should be preferred even to its legislative function. The argument is not only that discussed and interrogated administration is the only pure and efficient administration, but more than that, that the only really self-governing people is that people which discusses and interrogates its administration. The talk on the part of Congress which we

sometimes justly condemn is the profitless squabble of words over frivolous bills or selfish party issues. It would be hard to conceive of there being too much talk about the practical concerns and processes of government. Such talk it is which, when earnestly and purposefully conducted, clears the public mind and shapes the demands of public opinion."

Long afterward, a minority of the Senate killed President Wilson's armed neutrality ship bill. We all remember, I am sure, his classic excoriation of the Senate:

"The Senate of the United States is the only legislative body in the world which cannot act when the majority is ready for action. A little group of willful men, representing no opinion but their own, have rendered the great Government of the United States helpless and contemptible."

This is one example, a classic one. There have been many cases of Senators who have argued for greater restrictions on debate while pressing for a majority point of view, who changed their opinions when the heat of debate had cooled.

This point was deeply impressed on my mind when I recently made a thorough^{study}/of the issue of free debate in the Senate. I am sure that many others have come to this same conclusion after their research efforts on this subject. The distinguished senior Senator from Georgia (Mr. Russell), one of the Senate's most able parliamentary experts of all time, made a very similar observation when testifying before the Senate Rules Committee in 1952. Here is what he had to say:

"I have studied this question of the proposal to institute a more restrictive gag rule in the Senate. I once spent a couple of weeks in going back over the various occasions in the history of the Senate when these motions, these efforts, have been made to change the rules. I was interested to note two things: That almost always those who sought to change the rules to gag his adversary of the minority when he was in power became a great advocate of freedom of debate when he was translated from the majority to the minority. Further, almost invariably men who came to the Senate determined to change the Rules of the Senate, if they stayed there long enough, came to defend the rules."

Perhaps the best so-called "proof of the pudding" on this point lies in a statement made by a former President of the United States while serving as a member of this distinguished body during the period of 1915-20. Listen to these words of the late Warren G. Harding:

"I have been hearing about the reformation of the Senate since I first entered politics; and it was rather an ironical thing the other day that one of the most emphatic speeches made in favor of the adoption of this rule was uttered by the very latest arrival in this body.

"But the reformation of the Senate has long been a fad. I came here myself under the impression that there ought to be cloture and limitations on debate; and the longer I sit in this body, the more convinced do I become that the freedom of debate in the United States Senate is one of the highest guaranties we have of our American institutions.

"Mr. President, before I take my seat I wish to say that the length of a speech is not the measure of its merit.

"While the Senate may not listen, because the Senate does not listen very attentively to anybody, I discover, though Congress may not be apparently concerned and though the galleries of this body may not be filled to add their inspiring attention, I charge you now, Mr. President, that the people of the United States of American will be listening. This is the one central point, the one open forum, the one place in America where there is freedom of debate, which is essential to an enlightened and dependable public sentiment, the guide of the American Republic."

More than a half century ago Senator Hoar of Massachusetts made this point on how experience can change minds:

"There was a time in my legislative career when I believed that the absence of a cloture in the Senate was criminal neglect, and that we should adopt a system of rules by which business could be conducted; but the logic of my long service has now convinced me that I was wrong in that contention. There is a virtue in unlimited debate, the philosophy of which cannot be detected upon a surface consideration."

I believe that I understand the desire of some of my colleagues

to change the rules of the Senate. They are anxious to rush into law certain proposals which they believe to be right and for which they believe they can count a majority of the Senate.

Let us suppose, for the sake of argument, that the majority has been right on every occasion during the deliberations of the 85th Congress. I do not believe this for a moment, but let us suppose it. If we accept this supposition, it follows that the work of the Senate would have proceeded more quickly, and more legislation would have been passed, if debate had been severely restricted. However, those who believe that the majority has always been right during the 85th Congress would hardly have the temerity to predict that the majority will always be right in the 86th Congress, or in the 86th.

There inevitably come times when the majority is dead wrong, and these are times when the will of the majority, if unchecked, can destroy our American government. Some of the best examples of majority mistakes and wrongs were best summed up by former Senator James A. Reed of Missouri during the 1917 debate over Rule XXII with these words:

"Majority rule! Where is the logic or the reason to be found back of majority rule except in the mere necessity to dispatch business? The fact that a majority of 1 or 10 vote for a bill in the Senate is not a certification that the action is right. The majority has been wrong oftener than it has been right in all the course of time. The majority crucified Jesus Christ. The majority burned the Christians at the stake. The majority drove the Jews into exile and the ghetto. The majority established slavery. The majority set up innumerable gibbets. The majority chained to stakes and surrounded with circles of flame martyrs through all the ages of the world's history.

"Majority rule without any limitation or curb upon the particular set of fools who happen to be placed for the moment in charge of the machinery of a government! The majority grinned and jeered when Columbus said the world was round. The majority threw him into a dungeon for having discovered a new world. The majority said that Galileo must recant or that Galileo must go to prison.

The majority cut off the ears of John Pym because he dared advocate the liberty of the press."

~~Many other such examples could be cited down through the~~
years of history. Since Senator Reed made his great fight to preserve free debate in the Senate, an outstanding example of majority action has cost the world the most devastating war of all times. I refer to the action of the majority in placing Hitler in power. Soon after this occurred he had a 100 per cent majority in the German Parliament, but even this did not make Hitler's policies right. Nor does the alleged 99 per cent votes of the people of Soviet Russia in support of the Communist Party -- together with the unanimous approval of the Supreme Soviet Presidium -- make the policies of the Kremlin leaders best for the people or right, in any sense of the word.

There is no worse form of tyranny than the tyranny imposed by 51 per cent of the people on the other 49 per cent.

The Senate rules, as they stand, are an important safeguard to individual liberty.

No doubt there have been times when desirable legislation was delayed because a minority of the Senate took advantage of the opportunities which the rules afford to block legislation. But there have been few times, if any, when important legislation of a genuinely desirable nature was permanently defeated because a minority stood against it.

The rules provide opportunities for delay. They do not provide a method for the minority to impose its will permanently on a majority. In fact, the record shows that very few pieces of legislation have been defeated by resort to extended debate. It is true that there have been delays, but of the 35 bills which have been subjected to extended debate only five proposals have never passed. One of these proposals, the unconstitutional bill to remove the poll tax from State election lawbooks, was offered on four different occasions. My State of South Carolina long ago removed the poll tax voting requirement, as have all but five of the States which originally enacted such legislation. The control of elections, however, is a power reserved to the States, and the Federal government has no business repealing a State election law. That is the principal reason why the anti-poll tax bills have been killed on four occasions.

On Douglas Amendment *SEN. JAVITS*
✓ Mr. President, in connection with this vitally-important question of the preservation of Rule XXII, I should like to quote briefly some comments made by two of the most outspoken opponents of the present rule.

In the course of an address delivered on March 29, 1957, at Ohio State University, the distinguished senior Senator from Illinois (~~Mr. Douglas~~) made this statement, referring to the adoption of the present rule:

"What, in effect, has been done is to adopt John C. Calhoun's theory of concurrent majorities, under which a majority in the country or in Congress is not permitted to pass legislation unless it also meets with the approval of the majority of each and every section of the country. The failure of Calhoun and the South to establish this principle prior to 1860 was one of the factors which led to the Civil War. Its quiet adoption in modern times may well lead us to reconsider just who in the long run won that war."

In the same vein, the senior Senator from New York (~~Mr. Javits~~) in his statement appearing in the Report of the Committee on Rules and Administration, dated April 30, 1958, declared as follows, again referring to the principle embodied in Rule XXII:

"This kind of balance, which the opponents of civil-rights legislation wish to retain in the Senate, is a modern version of Calhoun's 'concurrent majorities.' It was such a sectional right of veto and interposition that Calhoun and other States-rights advocates urged during the debates, in and out of Congress, that led up to the Civil War. This type of imbalance, however, finds no support in the Constitution nor in current practice outside of Rule XXII."

Both of these distinguished Senators imply very strongly that the principle of the concurrent majority is a bad thing, an undesirable thing, something which all good Americans should abhor. This basic and general objection on their parts, I shall discuss in a few moments. First, however, I wish to address myself to the further statement made by the Senator from New York, to the effect that the doctrine of the concurrent majority is a repudiated and rejected theory which does not even exist in our system outside

of Rule XXII--if I may again quote the Senator's words, for emphasis, "This type of imbalance, however, finds no support in the Constitution nor in current practice outside of Rule XXII."

The Senator is very badly mistaken. How he can have been on the American political scene as long as he has and still make that statement, is beyond my comprehension. As a matter of fact, the principle of the concurrent majority--a principle, by the way, which was not invented by Calhoun, but rather was enunciated by him--is the very foundation and basis of the American political system. True, the specific factor involved in Rule XXII is a very important aspect of the concurrent majority principle; but to say that concurrent majority does not exist in actual practice outside of Rule XXII is to be blind to the entire political mechanism of our country.

A number of years ago, there appeared in Harper's Magazine (issue of November, 1948) a most interesting and informative article by the very able and very liberal writer, Mr. John Fischer, who has since become editor of the magazine. This article, which is entitled "Unwritten Rules of American Politics," bears so directly on the issue before us today, and the author has set down his thoughts so ably and so clearly, that I should like to quote several passages from this article, at some length, if I may.

In contrast to the two distinguished Senators, who apparently regard Calhoun's theories as suspect or sinister, or, it would appear, downright un-American, Mr. Fischer, "liberal" though he is, subscribes wholeheartedly to the view (expressed previously by Dr. Peter F. Drucker of Bennington College) that Calhoun's ideas are "a major if not the only key to the understanding of what is specifically and uniquely American in our political system."

Mr. Fischer writes as follows:

"Calhoun summed up his political thought in what he called the Doctrine of the Concurrent Majority. He saw the United States as a nation of tremendous and frightening diversity--a collection of many different climates, races, cultures, religions, and economic patterns. He saw the constant tension among all these special interests, and he realized that the central problem of American politics was to find some way of holding these conflicting groups together.

"It could not be done by force; no one group was strong enough to impose its will on all the others. The goal could be achieved only by compromise--and no real compromise could be possible if any threat of coercion lurked behind the door. Therefore, Calhoun reasoned, every vital decision in American life would have to be adopted by a 'concurrent majority'--by which he meant, in effect, a unanimous agreement of all interested parties. No decision which affected the slaveholders, he argued, should be taken without their consent; and by implication he would have given a similar veto to every other special interest, whether it be labor, management, the Catholic church, old-age pensioners, the silver miners, or the corn growers of the Middle West."

Now at this point, Mr. President, Mr. Fischer ventures his opinion that, "under the goad of the slavery issue, Calhoun was driven to state his doctrine in an extreme and unworkable form;" but he makes it clear that this fact does not detract from the basic soundness of the doctrine itself. Mr. Fischer goes on to explain the concurrent majority doctrine, as follows:

"...Government by concurrent majority can exist only when no one power is strong enough to dominate completely, and then only when all of the contending interest groups recognize and abide by certain rules of the game.

"These rules are the fundamental bond of unity in American political life. They can be summed up as a habit of extraordinary toleration, plus 'equality' in the peculiar American meaning of that term which cannot be translated into any other language, even into the English of Great Britain. Under these rules every group tacitly binds itself to tolerate the interests and opinions of every other group. It must not try to impose its views on others, nor can it press its own special interests to the point where they seriously endanger the interests of other groups or of the nation as a whole.

"Furthermore, each group must exercise its implied veto with responsibility and discretion; and in times of great emergency it must forsake its veto right altogether. It dare not be intransigent or doctrinaire. It must make every conceivable effort to compromise, relying on its veto only as a last resort. For if any player wields this weapon recklessly, the game will break up -- or all the other players will turn on him in anger, suspend the rules for the time

being, and maul those very interests he is trying so desperately to protect...

"This is the somewhat elusive sense, it seems to me, in which Calhoun's theory has been adopted by the American people. But elusive and subtle as it may be, it remains the basic rule of the game of politics in this country..."

Mr. President, I do not wish to labor the point, but I do want to make sure that the Senator from New York realizes that he was very seriously mistaken--and I want all the Members of this body to realize that he was mistaken--when he said that the concurrent majority system "...finds no support...in current practice outside of Rule XXII." Therefore, I shall, for the benefit of all the Senators, read several additional passages from Mr. Fischer's brilliant article. As Mr. Fischer points out,

"The way in which this tradition (the concurrent majority rule) works in practice can be observed most easily in Congress. Anyone who has ever tried to push through a piece of legislation quickly discovers that the basic units of organization on Capitol Hill are not the parties, but the so-called blocs, which are familiar to everyone who reads a newspaper. There are dozens of them--the farm bloc, the silver bloc, the friends of labor, the business group, the public power bloc--and they all cut across party lines.

"They are loosely organized and pretty blurred at the edges, so that every Congressman belongs at different times to several different blocs. Each of them represents a special interest group. Each of them ordinarily works hand-in-hand with that group's Washington lobby. In passing, it might be noted that these lobbies are by no means the cancerous growth which is sometimes pictured in civics textbooks. They have become an indispensable part of the political machine--the accepted channel through which American citizens make their wishes known and play their day-to-day role in the process of government....

"Now it is an unwritten but firm rule of Congress that no important bloc shall ever be voted down--under normal circumstances--on any matter which touches its own vital interests. Each of them, in other words, has a tacit right of veto on legislation in which it is primarily concerned. The ultimate expression of this right is the institution--uniquely American--of the filibuster in the Senate."

Before I continue with Mr. Fischer's remarks, Mr. President, let me point out that Mr. Fischer is a supporter of so-called civil rights legislation--this is clear from his use of the word "ruthlessly" in his next sentence, which I shall read to you. But this very fact renders all the more impressive what he has to say in regard to the rule permitting free debate, which is as follows:

"Recently it has acquired a bad name among liberals because the Southern conservatives have used it ruthlessly to fight off civil rights legislation.... Not so long ago, however, the filibuster was the stoutest weapon of such men as Norris and the LaFollettes in defending many a progressive cause--and...liberal Senators may well have cause to use it again."

But it is not only in the Congress, Mr. President, that the doctrine of concurrent majority holds sway. Let me quote further from Mr. Fischer's article:

"Calhoun's principles of the concurrent majority and of sectional compromise operate just as powerfully, though sometimes less obviously, in every other American political institution. Our cabinet, for example, is the only one in the world where the members are charged by law with the representation of special interests--labor, agriculture, commerce, and so on. In other countries, each agency of government is at least presumed to act for the nation as a whole; here most agencies are expected to behave as servants for one interest or another. The Veterans' Administration to cite the most familiar case, is frankly intended to look out for Our Boys; the Maritime Commission is the spokesman for the shipping industry; the National Labor Relations Board, as originally established under the Wagner Act, was explicitly intended to build up the bargaining power of the unions.

.....

"Calhoun's laws also govern the selection of virtually every candidate for public office. The mystery of 'eligibility' which has eluded most foreign observers simply means that a candidate must not be unacceptable to any important special interest group--a negative rather than a positive qualification. A notorious case of this process at work was the selection of Mr. Truman as the Democrat's vice-presidential candidate in 1944. As Edward J. Flynn, the Boss

of the Bronx, has pointed out in his memoirs, Truman was the one man 'who would hurt...least' as Roosevelt's running mate. Many stronger men were disqualified, Flynn explained, by the tacit veto of one sectional interest or another. Wallace was unacceptable to the business men and to many local party machines. Byrnes was distasteful to the Catholics, the Negroes, and organized labor. Rayburn came from the wrong part of the country. Truman, however, came from a border State, his labor record was good, he had not antagonized the conservatives, and--as Flynn put it--'he had never made any "racial" remarks. He just dropped into the slot.'

"The same kind of considerations govern the selection of candidates right down to the county, city and precinct levels. Flynn, one of the most successful political operators of our time, explained in some detail the complicated job of making up a ticket in his own domain. Each of the main population groups in the Bronx--Italians, Jews, and Irish Catholics--must be properly represented on the list of nominees, and so must each of the main geographical divisions. The result is a ticket which sounds like the roster of the Brooklyn Dodgers: Loreto, Delagi, Lyman, Joseph, Lyons, and Foley.

"Comparable traditions govern the internal political life of the American Legion, the Federation of Women's Clubs, university student bodies, labor unions, Rotary Clubs, and the thousands of other quasi-political institutions which are so characteristic of our society and which give us such a rich fabric of spontaneous local government."

✓ As I said at the outset, the first step I was undertaking in this address was to show beyond any peradventure of a doubt that the Senator from New York was in error--utterly and completely in error--when he said that Calhoun's Doctrine"...finds no support... in current practice outside of Rule XXII." I believe that the passages which I have read from Mr. Fischer's article have served to prove my point, more than satisfactorily; and I am sure that the Senator will, upon fair consideration, admit that he was indeed in error.

.....

So now that we have established the point that the doctrine of concurrent majorities, of which the rule permitting unlimited debate is a very vital part, is in actuality the very foundation-stone of our entire political system here in America--now we can turn to the question of whether it is desirable, or undesirable, that we continue that system.

Certainly I would not argue--I hope no one in the South would argue--that we ought to continue to follow any particular system or doctrine simply because it was enunciated and developed by a great Southerner, Calhoun. Nor do I think that anyone would say that the fact that the concurrent majority doctrine is, and always has been, the basic doctrine of American politics is, in and of itself, sufficient reason not to scrap that doctrine if it can be successfully attacked on its merits.

So let us do just that, Mr. President, let us go to the merits of the case. Let us look at Rule XXII, not only from the standpoint of its guarantee of the most thorough and searching debate of every minute (but often vital) detail of a proposed piece of legislation. Let us, for the moment, look at Rule XXII in its vital role as a key mechanism of the concurrent majority system--as a sort of minority veto, if you will. And let us be quite frank to state that that that is just what Rule XXII actually is--for, in addition to guaranteeing full and complete exploration of the issues, Rule XXII does, or may, fulfill the function of a sort of minority veto--at least a partial one--against hostile legislation passed by the majority.

I do not think that anyone can contend now, Mr. President, that we are not meeting the issue fairly and squarely. And, thus meeting it, I contend, Mr. President, that the principle embodied in Rule XXII, far from being harmful or undesirable, is on the contrary valuable, beneficial, indeed indispensable, to the national welfare; because, as a vital part of the concurrent majority system, it is the surest protection of the rights of minorities against the tyranny of numerical majorities.

That, Mr. President, is the primary reason why we must steadfastly oppose any weakening of the principle embodied in Rule XXII--on that principle depends the protection of minority rights in this country.

At this point, let me make it clear, Mr. President, that when I speak of "minorities," I use the term in its broad and general and universal sense (as employed by Calhoun and by Mr. Fischer) as applying to any type of minority group, whether it be sectional, ethnic, economic, religious, or otherwise; and not in the narrow and restricted meaning of the term, given it in recent years by those who would appropriate it to the exclusive use of certain racial and ethnic groups, the members of which are, to a large extent, located in politically-strategic metropolitan areas of the North.

Bearing always in mind, then, Mr. President, this broad and true concept of the term "minority," I contend that Rule XXII is in the long run a valuable, probably the most valuable, protection possessed by minority groups in this country. For minorities, of whatever kind, Rule XXII is a shield against tyrannical legislation by the majority. It is, let me emphasize, a shield--never a sword, but only a shield; for it is a negative and not a positive power. It is a power by which the minority can, at the most, only prevent (and, usually, only modify) hostile legislation by the majority--it does not enable the minority to impose harmful legislation on the majority. It is a purely defensive weapon; and it is, I repeat, an indispensable one, if minorities in our society are to have any meaningful protection.

And why should not a minority be entitled to protection, where its own vital interest is concerned, against seriously-harmful legislative action by a majority whose interests are not directly or vitally involved? I believe that such a minority should have such protection; I believe that such a minority is entitled to a defensive veto.

Evidently, the distinguished senior Senator from Illinois does not believe that a minority should be thus entitled to protection; either that, or he does not accord the great sectional minority known as the South the official status of being a "minority" at all (he being one of those, perhaps, whom I mentioned earlier as reserving the sacred term "minority" for the exclusive use of certain racial and religious groups which have a potent voting concentration in certain key urban areas of the North--such as for instance, Cook County, Illinois).

Mr. President, I hesitate to venture at this point into the area of "civil rights," an area so emotionally-charged, an area so complex--an area in which there are wheels within wheels, and problems within problems. But I know that members of the opposition will bring it up anyway--in fact, many of them are frank to state that their primary reason for seeking to emasculate Rule XXII is to facilitate the passage of more and more so-called civil rights legislation--; and so I may as well go ahead and use this explosive field as my first example.

Mr. President, in the same address from which I quoted earlier today, the Senator from Illinois had this to say in regard to the use of the "filibuster" to block legislation: "...In practice it is probably limited...to those questions which a majority of the country as a whole favors, but which the voters of a large section bitterly oppose...Civil rights legislation furnishes such an issue. The articulate sentiment of the South is vigorously opposed. And while public opinion in the North and West is on the whole favorable, it is in the ~~main~~ only tepidly so."

The Senator has put his finger right on it. Here is an issue, in which the minority section--the South--, its own deepest interests being vitally concerned, is (as he puts it) "vigorously opposed" to the legislation, and in which the majority section (the North and West, that is, the U. S. outside the ~~South~~) is, while on the whole favorable, only tepidly favorable--the reason for this tepidness being, of course, that in most areas of the majority section the problem is viewed only from the standpoint of theory and not that of practical conditions.

Now admittedly, this "civil Rights" question is in some respects a somewhat atypical situation, in that, in addition to the usual elements of the tepid, not-directly-affected majority (the North and West as a whole) and the vitally-concerned and immediately-affected major minority--the South~~es~~, we have in this case also another, smaller, minority, namely the artificially-, emotionally- (let us simply say, politically-) stimulated, and politically-potent, minority known as the Northern Negro. This is what I meant when I spoke of this problem as a complex one, having wheels within wheels. But the fact still remains that, speaking of the Northern population as a whole, we have in this situation a majority not

directly concerned and so only tepidly in favor, and on the other hand a minority--the South--which, since its vital interest--its most vital domestic interest--is directly and immediately at stake, is passionately opposed.

I say, Mr. President, that in such a situation, the minority is entitled to a form of partial veto by which it can prevent or at least modify extreme legislation--a protection which is now afforded by Rule XXII. Here we have a large and important minority section of the country, the South, faced with legislation which would seriously and adversely affect it in its most vital domestic interest--by all means, that minority is entitled, under all the rules of our system as set forth so ably by Mr. Fischer, to the protection which Rule XXII affords.

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But let us turn from civil rights to another field, a field where the issues can be viewed more dispassionately than they possibly could, at the present time and in the present atmosphere, in any field involving questions of race. Let us leave the South and turn to the West.

Throughout far the greater part of this huge region, which comprises more than half of the nation's area--all or part of seventeen/^{very}large States--, arid or semi-arid climatic conditions prevail. The fact that rainfall is light and that water is therefore in short supply is perhaps the foremost fact that must be kept in mind in any consideration of the West. The historian Walter Prescott Webb has gone so far as to say that "The overriding influence that shapes the West is the desert."

I do not imagine that that is an overstatement. If it can be said that the cardinal problem of the South has been the problem of the Negro, it can also be said, perhaps even more truly, that the great problem of the West, throughout its history, has been the problem of water--or, rather, the lack of it.

~~But~~ ^{Now} I realize that, especially with the increasing industrial uses of water, the question of insufficient water supply is becoming a national problem, in a sense. But in a sense only, and never in the Western sense. Nowhere in the humid East or South is water the problem, or even the kind of problem, that it is, and always has been, throughout the arid and semi-arid West. To be sure, we in the

Southeastern States have known periods of droughts, sometimes severe ones, and I am sure that the same has been true of New England and the Central States; but the farmers of our green and fertile and well-watered eastern half of the country have never known the life-or-death importance of water with quite the degree of immediacy and intimacy that ~~have~~^{has} been the lot of the Western farmer or rancher.

A drought such as those we occasionally have in the South can cause great harm to individual farmers and sometimes can even adversely affect the economies of considerable areas; but, comparatively speaking, the effect is generally only temporary, ~~due~~^{due} to the blessed fact of our abundant average annual rainfall. But in the West, droughts have virtually depopulated whole sections of States and caused vast migrations of stricken farm families; and the scarcity of water, to ~~begin~~^{begin} with, has stifled the development, and in some cases completely prevented the settlement, of tremendous areas of the West. Small wonder then, that the problem of water looms so large in the Western mind? No wonder at all that the question of control, development, and distribution of what water supplies do exist is, and long has been, a burning political, economic and social issue throughout the Western States--the West's most vital domestic concern.

Now, Mr. President, let us suppose that we are faced with a legislative proposal concerning water policy, one that would effect major and far-reaching changes in present water policy. It might be a bill which would have the effect of nullifying State water rights and vesting total control of water supplies in Western areas in the Federal government; it might deal with irrigation and reclamation projects; or it might be a bill dealing with watershed control which would forbid State or Federal public power projects or which would have the effect of handing over control of Western water resources to utility holding companies. For the purposes of this argument, however, the exact proposal embodied in the bill does not matter. Let us simply say that it is a broad and far-reaching bill dealing with water policy.

Let us further assume, Mr. President, that public sentiment in the eastern half of the country is, in the main, favorable to the

legislation. Only tepidly so, to be sure, to follow the wording of the Senator from Illinois--tepidly, because, their part of the country not being directly affected one way or the other, they really don't care very much about the issue. But still, on the basis of some editorials they have read in their newspapers, or some articles in picture magazines, and since, superficially at least, the announced purpose of the bill seem to be pretty much in accord with their political philosophies; since, in short, the proposal looks like a pretty fair deal which might bolster the national economy (at least its proponents say so), they are in favor of it rather than opposed to it.

To make the situation a little more complex politically, and also to keep it somewhat analogous to the civil-rights situation, let us add to this tepid majority of the national public a very un-tepid group of utility companies, headquartered in the East but with interests in the West, and their financier allies--the real proponents of this bill, who stand to gain incredibly enormous profits if it becomes law. This element having considerable political power and, as already stated, the majority of the public at large being in favor of the proposal, albeit tepidly so, a majority of Senators are lined up in favor of the bill.

But let us say, Mr. President, that the people of the Western States, are passionately and almost unanimously opposed to the bill, because they are convinced that its passage will seriously and adversely affect their most vital interests. Conceivably the bill could be fatally destructive of the entire economic and social structure of most of the West.

Now if this were the situation, under the present rules, Mr. President, you know what would happen to that bill. It would never get through the Senate; in fact, it would probably never even be seriously proposed, at least without substantial modification, for the prospect of a determined filibuster by twenty or thirty Western Senators would, as the Senator from New York expressed it, "make the majority come to terms."

But take away Rule XXII, that shield and buckler of minorities, and this or any other outrage could be imposed on the West or any other minority element in our country. My distinguished colleagues from New York and Illinois, and their allies, would have it so.

They would give to a simple majority of this body virtually absolute power over minorities. Apparently, Mr. President, they worship King Numbers. I want to make it clear, that, like John Randolph of Roanoke, I do not. And I want to say, Mr. President, that it will be a sad day for minorities in this country of ours when the Members of this body, in derogation of their long-followed tradition of concurrent majority, shall scrap the benign and moderating influence of Rule XXII and substitute instead the rule of King Numbers--the most tyrannical ruler that ever lived.

.....

Mr. President, minority groups are not the only beneficiaries of Rule XXII. The greatest beneficiary of Rule XXII is the country as a whole. The emasculation of Rule XXII would be a blow to minorities, but it would be also a tragedy to the whole country. For Rule XXII -- the mere existence of the rule -- accomplishes two very great things for the country: First, by discouraging extreme legislation in any direction, and preventing violent swings from left to right, it promotes stability in government. Second, by giving minorities a defensive shield against tyranny, it discourages the arising of tensions and situations which could, and probably would, lead to various and frequent forms of civil strife, perhaps actual civil war.

By way of explaining what some may at first thought deem rather extravagant claims in behalf of Rule XXII, let me read a paragraph from the previously-mentioned Individual Views of the senior Senator from the State of New York. He says:

The ability to carry on a filibuster can affect the kind of legislation passed by the Senate even though no actual filibuster is undertaken. The incidence of a filibuster or the certain knowledge that a filibuster would be organized has made the majority come to terms before. The mere threat that a filibuster of great length would be undertaken against some proposal or unless amendment to a bill was accepted has in effect resulted in the majority of the Senate acquiescing in changes in legislation....

The distinguished Senator is quite correct in his statement -- I agree with his analysis completely. The state of facts is just as he has put it. That is the way it is. Furthermore -- and this is where the Senator and I part company, unfortunately --, I maintain that it is right and good and fortunate for the country that that is the way it is; and I hope and pray that that is the way it will continue to be.

For if the Rule should be changed, as the Senator would have it changed, so that legislative power would be absolute in a bare majority of the Members of this Body, our country would lose its political stability. Our society, instead of continuing to follow a generally middle-of-the-road course, would soon be characterized by violent swings from right to left, from conservative to radical and then back to ultra-conservative, from aggrandizement of a given interest group to extreme oppression of that interest group. I submit, Mr. President, that our country would be much the poorer for all this.

As matters stand now, due to the mere existence of Rule XXII, the mere overhanging threat of a filibuster by any minority whose vital interest would be seriously threatened by a proposed piece of legislation, exerts a healthy moderating influence against extremes in any direction, against unconscionable oppression of any minority interest.

Mark now, let me again emphasize, this by no means constitutes what the opposition would have it, "minority rule" -- it is only a defensive power in the minority to prevent extreme tyranny by the majority. And, as Mr. Fischer pointed out, this veto is not used recklessly or with abandon; it is not something to be wielded lightly, but only when confronted by the most extreme peril; its use is reserved for only those issues deemed the very most vital to the well-being of the minority in question. The reason for this is, of course, two-fold: First, it is neither an easy nor a pleasant exercise to conduct a filibuster. Second, the minority which today is making use of the negative power of the filibuster in order to block legislation must always remember that tomorrow it will be needing legislative allies from among various other blocs in order to pass some desired piece of positive legislation. As Mr. Fischer expresses it:

The farm bloc, for instance, normally needs no outside aid to halt the passage of a hostile bill. As a last resort, three or four strong-lunged statesmen from the corn belt can always filibuster it to death in the Senate. If the bloc wants to put through a measure to support agricultural prices, however, it can succeed only by enlisting the help of other powerful special interest groups. Consequently, it must always be careful not to antagonize any potential ally by a reckless use of the veto....

But I have digressed somewhat. As I was saying, Rule XXII as it now stands, providing as it does the ever-present threat of a

filibuster by any minority which would be critically-threatened, exerts a healthy and moderating influence on legislation. Take away that rule and the inherent protection for minorities which it provides, and a bare majority of Senators could, and would, ram through whatever legislation they might choose, no matter how extreme, how punitive, or how fatal to the interests of any segment of our society.

Given a sharp split on some clear-cut major issue, in one year a bill which goes to extremes in one direction would be passed; a slight shift in Senate membership in a succeeding session could result in a violent swing in the opposite direction. One year, in which the radical forces were in a slight majority in the Senate and also had the Presidency, a labor-relations code that was strongly pro-labor and anti-management could become law; a very slight shift in popular sentiment could result the next year (say it was a presidential year) in a conservative President, and in a Senate in which conservatives, instead of radicals, held a bare majority, and in place of the bill that was pro-labor, a union-crippling, flagrantly pro-management bill would be passed. One Congress would nationalize the railroads, or the steel industry, the next would denationalize them; and so on and on, issue upon issue, ad infinitum. How long, Mr. President, could our government, our economy and our society survive such intolerable instability?

But the moderating influence which Rule XXII exerts on legislation does more than merely promote order and stability in our government and in our society; it is not too much to say that Rule XXII insures the very survival of that government and that society. For, by preventing extreme oppression of sectional or other minorities in this country, it discourages the arising of those tensions and resentments and feelings of injustice and frustration which otherwise would explode in civil war. (We would do well to remember that on one of the very few major occasions in our history that the rules of the game were suspended and an important minority was completely overridden by the majority -- namely, when the South was overridden by the anti-slavery combination, resulting in the election to the Presidency of a totally sectional President and the dominance of a frankly sectional party which was non-existent in the South --, the result was the dissolution of the government and

four years of bloody war.) People today tend to think of serious domestic violence or war as something which happened in the distant past and which would never happen again. But the reason why we have had internal stability in this country since the end of the Reconstruction has been precisely because, from 1877 to the present (with perhaps one exception, during the early years of the New Deal), the Doctrine of the Concurrent Majority has been scrupulously followed. With the close of the experiment of Reconstruction, says Mr. Fischer, "American politics ... swing back into its normal path and has never veered far away from it since. Although Calhoun's cause was defeated, his political theory came through the Civil War stronger than ever."

Mr. President, if we in this country try to get away from Calhoun's eternal political truths; if we throw over the Doctrine of the concurrent majority; or if we gravely weaken that doctrine, as we will do if we cast aside Rule XXII, which is one of its cardinal features -- if we do that, Mr. President, our country is headed for disaster. Let us be frank, let us be blunt, and say that our country is headed for civil upheaval. I am not threatening, Mr. President, or predicting, that the conflict or conflicts which will surely arise will be, as in 1860, between the North and the South. I cannot say, I do not know, at the present time, just where the lines of division will be drawn. I do not know whether the divisions will be along sectional lines at all, or whether they will be along economic or ideological lines, or an overlapping combination of all of these. But I do know this: that when a minority, especially if it is a fairly sizable or powerful one, feels the tyranny of the unrestrained majority, feels the oppression of extreme legislation which this unchecked majority will inevitably impose; when the minority can no longer defend itself by means of the shield that is Rule XXII -- then, Mr. President, then you are going to see that minority -- perhaps, indeed probably, in concert with other minorities which have likewise felt majority oppression -- take steps to protect itself by whatever means it finds at its disposal -- by intrigue, conspiracy, and coup d'etat if possible, by bloody revolution if necessary. Nor could we blame them, we who had taken from them their peaceful defensive shield, their peaceful political form of protection -- for there is no more

harsh rule than the rule of King Numbers, no worse tyranny than the tyranny of the unrestrained majority.

Yet that, Mr. President, is what the Senator from Illinois, the Senator from New York, and their allies, would impose upon us -- although, of course, this result would be the farthest thing from their intention. How fatal is shortsightedness, how tragic the result of taking the short-range view! Here we have a group of Senators, with the avowed purpose of improving the status and well-being of minority groups in this country. And, tragically taking the short-range view instead of the long view, how do they propose to go about it? By introducing a measure which, if adopted, will do more, in the long run, to curtail the rights and destroy the well-being of minorities than any other measure ever introduced in this Body; and which would, at the same time, be detrimental, perhaps fatal, to the well-being of the country as a whole.

Mr. President, the Members of this Body now know the facts; they know what is at stake. It is within their power to prevent this tragedy's coming to pass. They have a terrible responsibility. May they have the vision to look beyond the short view and the strength to act in accordance with the long-range well-being, not only of minority groups, but of the United States of America.

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